

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DON PETERKIN, 07B0641,

Petitioner,

-v-

DECISION AND ORDER
13-CV-6172Fe

THOMAS LAVALLEY,

Respondent.

INTRODUCTION

Petitioner Don Peterkin, a prisoner incarcerated at Clinton Correctional Facility, has filed a petition for writ of habeas corpus, pursuant to 28 U.S.C. s 2254.

DISCUSSION

The filing fee for a petition for writ of habeas corpus is \$5.00. Whenever a prisoner submits a petition for writ of habeas he must either (1) pay the filing fee or (2) submit a motion to proceed *in forma pauperis*, that includes, pursuant to 28 U.S.C. § 1915(a)(1) and Rule 3(a)(2) of the Rules Governing Section 2254 Cases in the United States District Courts, (a) an affidavit of affirmation setting forth information that establishes that the petitioner is unable to pay the fees and costs for the proceedings, and (b) a Prison Certification Section completed and signed by an authorized officer of the institution in which the prisoner is incarcerated certifying (1) the amount presently on deposit in the prisoner's inmate trust account, and (2) the prisoner's average account balance during the last six months.

Petitioner did not prepay the \$5.00 filing fee nor did he submit a motion to proceed *in forma pauperis* with a completed and signed Prison Certification Section.

CONCLUSION

For the reasons set forth above, the Clerk of the Court will be ordered to administratively terminate the Petition without prejudice. Petitioner will be granted leave to move to re-open within 30 days, by either (1) prepaying the filing fee (\$5.00) or (2) submitting a motion to proceed *in forma pauperis* that includes a completed and signed Prison Certification Section.

ORDER

IT IS HEREBY ORDERED that the Clerk of the Court is directed to administratively terminate this action without prejudice without filing the petition or assessing a filing fee;

FURTHER, that the Clerk of the Court is directed to send to petitioner a form motion to proceed *in forma pauperis*;

FURTHER, that if petitioner wishes to re-open this action, he shall so notify the Court, in writing, no later than **May 17, 2013**; petitioner's writing shall include either (1) a motion to proceed *in forma pauperis* that includes a completed and signed Prison Certification Section, or (2) the \$5.00 filing fee;

FURTHER, that upon the petitioner's submission of either (1) a motion to proceed *in forma pauperis*, or (2) the \$5.00 filing fee, the Clerk of the Court shall re-open this case.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

DATED: April 15, 2013
Rochester, New York